

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

DAVID MCALPINE,

Plaintiff,

v.

THE NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY AND DAVID  
THORPE,

Defendants.

§  
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§

C.A. NO. 4:15-cv-00954

**DEFENDANT'S INDEX OF STATE COURT MATTERS**

Defendant The Northwestern Mutual Life Insurance Company, in connection with the removal of this case to the United States District Court for the Northern District of Texas, Fort Worth Division, files its index of state court matters, pursuant to Local Rule 81, as follows:

	<b><u>State Court Document</u></b>	<b><u>Date</u></b>
1.	Civil Docket Sheet	N/A
2.	Plaintiff's Original Petition	07-27-2015
3.	Executed Citation – The Northwestern Mutual Life Insurance Company by serving Corporation Service Company	08-04-2015
4.	Plaintiff's First Amended Original Petition	11-20-2015
5.	Service Request Form	11-20-2015
6.	Executed Citation – The Northwestern Mutual Life Insurance Company by serving C. Tait Cruse	10-23-2015

Respectfully submitted,

By: /s/ Bill E. Davidoff  
Bill E. Davidoff  
State Bar No. 00790565  
[bill.davidoff@figdav.com](mailto:bill.davidoff@figdav.com)  
Amber D. Reece  
State Bar No. 24079892  
[amber.reece@figdav.com](mailto:amber.reece@figdav.com)

FIGARI + DAVENPORT, LLP  
901 Main Street, Suite 3400  
Dallas, TX 75202  
TEL: 214.939.2000  
FAX: 214.939.2090

ATTORNEYS FOR DEFENDANT  
THE NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY AND DAVID  
THORPE

**CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties who have appeared and registered with CM/ECF.

/s/ Bill E. Davidoff  
Bill E. Davidoff

## **EXHIBIT “1”**



**Tarrant County District Clerk Online**  
**Thomas A. Wilder, District Clerk**

Civil - Case and Transaction Information

12/7/15 10:48 AM

Cause Number: 153-279972-15

Date Filed: 07-27-2015

DAVID MCALPINE

| VS |

THE NORTHWESTERN MUTUAL LIFE  
INSURANCE CO, ET AL

Cause of Action: CONTRACT, INSURANCE

Case Status: PENDING

File Mark	Description		Assessed Fee	Credit/Paid Fee
07-27- 2015	<u>PLTF'S ORIG PET</u>	N	<u>274.00</u>	
		I		
07-27- 2015	<u>COURT COST (PAID) trans #1</u>	Y		<u>274.00</u>
07-27- 2015	<u>COPIES - ELECTRONIC</u>	N	<u>1.75</u>	
07-27- 2015	<u>COURT COST (PAID) trans #3</u>	Y		<u>1.75</u>
07-27- 2015	<u>SERVICE FEE, SUBSEQUENT CERTIFIED MAIL</u>	N <u>Svc</u>	<u>75.00</u>	
07-27- 2015	<u>COURT COST (PAID) trans #5</u>	Y		<u>75.00</u>
07-27- 2015	<u>CIT-ISSUED ON NORTHWESTERN MUTUAL LIFE INSURANCE-ON 07/28/2015</u>	N <u>Svc</u>	<u>8.00</u>	
07-27- 2015	<u>COURT COST (PAID) trans #7</u>	Y		<u>8.00</u>
07-27- 2015	<u>E-FILE TRANSACTION FEE</u>	N	<u>2.00</u>	
07-27- 2015	<u>COURT COST (PAID) trans #9</u>	Y		<u>2.00</u>
08-04- 2015	<u>CIT Tr# 7 RET EXEC(NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION) On 07/30/2015</u>	I		<u>0.00</u>
11-20- 2015	<u>PLTF'S 1ST AMD PET</u>	I		<u>0.00</u>
11-20- 2015	<u>CIT REQ</u>	I		<u>0.00</u>
11-20- 2015	<u>CIT Cert Mail-ISSUED ON NORTHWESTERN MUTUAL LIFE INSURANCE CORPO-On 11/23/2015</u>	N <u>Svc</u>	<u>83.00</u>	
11-20- 2015	<u>COURT COST (PAID) trans #14</u>	Y		<u>83.00</u>
11-20- 2015	<u>E-FILE TRANSACTION FEE</u>	N	<u>2.00</u>	
	<u>COURT COST (PAID) trans #16</u>	Y		<u>2.00</u>

11-20- 2015				
11-20- 2015	<u>PLTF'S 1ST AMD ORIG PET</u>	I		<u>0.00</u>
11-20- 2015	<u>COPIES - ELECTRONIC SENT TO DOC PROD</u>	N	<u>1.75</u>	
11-20- 2015	<u>COURT COST (PAID) trans #19</u>	Y		<u>1.75</u>
11-20- 2015	<u>E-FILE TRANSACTION FEE</u>	N	<u>2.00</u>	
11-20- 2015	<u>COURT COST (PAID) trans #21</u>	Y		<u>2.00</u>
12-04- 2015	<u>CIT Cert Mail Tr# 14 RET EXEC(NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION) On 12/01/2015</u>	I		<u>0.00</u>

**District Clerk's Office**

Tom Vandergriff Civil Courts Building

100 N. Calhoun St., 2nd Floor, Fort Worth, Texas 76196, [Contact Us](#)Please send questions and comments regarding the District Clerk web site to [District Clerk Webmaster](#)

## **EXHIBIT “2”**

TARRANT COUNTY  
7/27/2015 3:04:30 PM  
THOMAS A. WILDER  
DISTRICT CLERK

CAUSE NO. 153-279972-15

<b>DAVID MCALPINE</b>	§	<b>IN THE DISTRICT</b>
<i>Plaintiff</i>	§	<b>COURT</b>
	§	
	§	
<b>v.</b>	§	<b>_____ DISTRICT</b>
	§	
<b>THE NORTHWESTERN</b>	§	
<b>MUTUAL LIFE</b>	§	
<b>INSURANCE CO.; AND</b>	§	<b>TARRANT COUNTY,</b>
<b>DAVID THORPE</b>	§	
<i>Defendants</i>	§	<b>TEXAS</b>

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **DAVID MCALPINE**, hereinafter referred to as Plaintiff, complaining of **THE NORTHWESTERN MUTUAL LIFE INSURANCE CO. and DAVID THORPE** , hereinafter referred to as Defendants, and for cause of action, Plaintiff would respectfully show the Court and Jury as follows:

Plaintiff intends for discovery to be conducted under Level III pursuant to Rule 190.1 of the Texas Rules of Civil Procedure.

**II.**

**SERVICE**

1. Defendant, **NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION** is a Corporation which may be served through its registered agent for service, Corporation Service Company at 211 E. 7<sup>th</sup> Street, Suite 620, Austin, TX 78701.

2. Defendant David Thorpe, is a **NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION** employee who is a Texas resident, whose address is currently unknown at

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this time.

### III.

#### FACTS

3. On September 20, 1990, Plaintiff David McAlpine contracted with The Northwestern Mutual Life Insurance Company to provide disability income insurance in the event that he suffered disability and was impaired in his ability to work. Plaintiff will show that all premiums were paid and the policy was and remains in full force and effect.

4. The policy provides that the “Full Benefit” is payable for “Total Disability” and that the “Proportionate Benefit” is payable for partial disability.

5. David McAlpine is a Fort Worth OB/GYN who has run a busy practice in Fort Worth for over 25 years. At least as early as August 13, 2013, Plaintiff McAlpine began to experience pain in both hands and suffered extensive osteoarthritis, which eventually led to him being forced to stop taking new obstetrics patients altogether on December 20, 2013. Defendant David Thorpe is a Northwestern Mutual Life Insurance Company employee and investigator who has participated in the denial of Dr. McAlpine’s contracted for policy benefits.

6. At or near the time these original policies were purchased, Dr. McAlpine was concerned about certain policy definitions and requested clarification. A letter written by an associate actuary on behalf of Defendant in 1990 clarified that both obstetrics and gynecology are two separate “occupations” and that the term “Total Disability” is defined as the inability to perform one’s “occupation” and that “all occupations will be combined together to be ‘his occupation’”. Despite the plain language of the 1990 letter and the fact that Dr. McAlpine is unable to perform obstetrics, Defendant has denied paying him his contracted for “Total Disability” payments.



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**IV.**

**CAUSE OF ACTION AGAINST DEFENDANTS:**  
**BREACH OF CONTRACT**

7. Plaintiff, **DAVID MCALPINE** would show that prior to the 15<sup>th</sup> day of June 2010, the Defendant insurance company, **THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY**, issued Disability Income policies to **DAVID MCALPINE**, policy number D712825 and D776743, which provided coverage in the event that Plaintiff became totally disabled, the Plaintiff would be paid full benefits at the time of the incident, based on his inability to perform the duties of his occupation". Said policy was in full force and effect and all premiums paid at all times relevant hereto. Plaintiff requests recovery at common law and VATS Ins. Code §542. Plaintiff has not been paid under the terms of his contract with Defendant.

8. Defendant, **THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY** is hereby given notice to produce such policy of insurance on the trial of this case. If necessary, secondary evidence will be introduced by the Plaintiff to prove the existence and terms of the policies.

**CAUSE OF ACTION AGAINST DEFENDANTS:**  
**BAD FAITH**

**a. Ch. 541 Texas Insurance Code Violations**

Sec. 541.060. UNFAIR SETTLEMENT PRACTICES.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

- (1) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;
- (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:
  - (A) a claim with respect to which the insurer's liability has become reasonably clear;

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(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(4) Failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(7) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:

(A) a court orders the claimant to produce those tax returns;

(B) the claim involves a fire loss; or

(C) the claim involves lost profits or income.

**Sec. 541.061. MISREPRESENTATION OF INSURANCE POLICY.**

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:

- (1) making an untrue statement of material fact;
- (2) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;
- (3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
- (4) a material misstatement of law; or

**b. Texas Deceptive Trade Practices Act Violations**

**Sec. 17.50. RELIEF FOR CONSUMERS.** (a) A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

(4) the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code

**VI.  
DAMAGES**

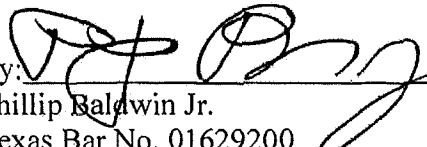
9. As a proximate result of the conduct as above described, Plaintiff, **DAVID MCALPINE** sustained personal injuries, all of which have caused him in the past, and will cause him in the future, contracted for "Total Disability" benefits, mental anguish, and lost wages, for which he

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should be compensated in accordance with the laws of the State of Texas. Specifically, because these actions were committed knowingly and intentionally, Plaintiff is entitled to three times the economic damages, mental anguish damages, and necessary court cost's and attorney's fees under 17.50(b) of the Texas Business and Commerce Code. Plaintiff will further show that she is entitled to Attorney's Fees Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 38.001(8) (Vernon 2008).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final hearing hereof, Plaintiff have judgment against Defendant for all damages to which they are entitled under the laws of the State of Texas, which amount exceeds the minimum jurisdictional limit of this Court; for pre-judgment interest in accordance with the law; for interest on the judgment; cost of suit; and for such other and further relief, either at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

By:   
Phillip Baldwin Jr.  
Texas Bar No. 01629200  
4412 Rosewood  
Marshall, Texas 75672  
Mailing Address  
P. O. Box 1948  
Marshall, Texas 75671-1948  
Tel. (903) 926-1095  
Fax. (210) 568-6959  
Email: pbbjr@msn.com  
Attorney for Plaintiffs

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**

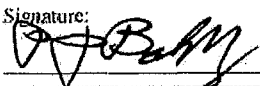
# CIVIL CASE INFORMATION SHEET

Case 4:15-cv-00954-Y Document 1-1 Filed 12/16/15 Page 12 of 32 PageID 22  
 CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED: David McAlpine v Northwestern Mutual Life Insurance Corporation and David Thorp

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: Phillip Baldwin Jr. Address: P. O. Box 1948 City/State/Zip: Marshall Texas 75671-1948 Signature:  Email: pbbjr@msn.com Telephone: (903) 926-1095 Fax: (210) 568-6959 State Bar No: 01629200		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): Dr. David McAlpine Defendant(s)/Respondent(s): Northwestern Mutual Life Insurance Corporation and David Thorpe Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>		<b>Family Law</b>	
<b>Contract</b> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:		<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:	
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:	
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>			
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	
<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover		<b>4. Indicate damages sought (do not select if it is a family law case):</b> <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000	

## THOMAS A. WILDER, DISTRICT CLERK

### TARRANT COUNTY E-FILING SERVICE REQUEST FORM

\* This document MUST be filed as a **LEAD DOCUMENT REQUEST** for E-Filing.  
153-279972-15

Cause No: \_\_\_\_\_

Style of Case: \_\_\_\_\_

Please reference the District Clerk web page, [www.tarrantcounty.com/eDistrictClerk](http://www.tarrantcounty.com/eDistrictClerk) for the following forms:  
Abstracts, Executions, Subpoenas.

**Choose the type of service documents for issuance and select the type and quantity of issuance(s) needed.**

☐ **Check box if you would like the District Clerk's Office to make copies for your service.** (add  
\$.35 per page per pleading for copies for service)

Quantity	Type of Service	TC Constable	Alternative Service (Private Process or Out of County)	Certified Mail
	Citation by Publication			
	Citation by Posting			
	Citation			
	TRO			
	Show Cause			
	Capias			
	Arrest Warrant			
	Protective Order			
	Writ of Habeas			
	Writ of Attachment			
	Bench Warrant			
	Writ of Garnishment			
	Writ of Permanent Injunction			
	Writ of Temporary Injunction			

Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____
Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____
Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____

Attach additional pages if there are more parties to be served.

**ATTORNEY(OR ATTORNEY'S AGENT) REQUESTING SERVICE:**

NAME: \_\_\_\_\_ TEXAS BAR NO./ID NO. \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

PHONE NO: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

REVISED 12/20/13

## **EXHIBIT “3”**

Cause Number 153-279972-15  
DAVID MCALPINE VS THE NORTHWESTERN MUTUAL LIFE  
INSURANCE CO, ET AL

OFFICER'S RETURN

Received this Citation on the 28th day of July, 2015 at 11:54 AM; and executed at  
B/S CORPORATION SERVICE COMPANY REG AGENT 211 E 7TH ST STE 620 AUSTIN TX 78701

within the county of \_\_\_\_\_ State of TX on the 30th day of July, 2015 by mailing to  
the within named NORTHWESTERN MUTUAL LIFE INSURANCE CORPO a true copy of this Citation  
together with the accompanying copy of:  
PLAINTIFF'S ORIGINAL PETITION

Authorized Person/Constable/Sheriff: Thomas A. Wilder  
100 N CALHOUN  
FORT WORTH TX 76196-0402

County of Tarrant, State of Texas

By Marinell Joyner Deputy

Fees \$ 0.00

MARINELL JOYNER

(Must be verified if served outside the State of Texas)

State of \_\_\_\_\_ County of \_\_\_\_\_

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_  
to certify which witness my hand and seal of office

(Seal)

County of Tarrant, State of Texas

FILED  
TARRANT COUNTY  
2015 AUG -4 PM 4:23  
THOMAS A. WILDER  
DISTRICT CLERK



\*15327997215000007\*

SERVICE FEES NOT COLLECTED  
BY TARRANT COUNTY DISTRICT CLERK

FILED  
TARRANT COUNTY

2015 AUG -4 PM 4: 23

THOMAS A. WILDER  
DISTRICT CLERK





THE STATE OF TEXAS  
DISTRICT COURT, TARRANT COUNTY

ORIGINAL

CITATION

Cause No. 153-279972-15

DAVID MCALPINE

VS.

THE NORTHWESTERN MUTUAL LIFE INSURANCE CO, ET AL

TO: NORTHWESTERN MUTUAL LIFE INSURANCE

CORPORATION

B/S CORPORATION SERVICE COMPANY REG AGENT 211 E 7TH ST STE 620 AUSTIN, TX  
78701- US

You said DEFENDANT are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 153rd District Court, 100 N CALHOUN, in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

DAVID MCALPINE

Filed in said Court on July 27th, 2015 Against  
NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION, DAVID THORPE

For suit, said suit being numbered 153-279972-15 the nature of which demand is as shown on said PLAINTIFFS' ORIGINAL PETITION a copy of which accompanies this citation.

FILED  
TARRANT COUNTY  
2015 AUG -4 PM 4:20  
THOMAS A. WILDER  
DISTRICT CLERK

PHILLIP BALDWIN, JR

Attorney for DAVID MCALPINE Phone No. (903)926-1095  
Address 4412 ROSEWOOD MARSHALL, TX 75672

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 28th day of July, 2015.

By  Deputy  
KIMBERLY KRUMLAND

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 100 N CALHOUN, FORT WORTH TX 76196-0402

OFFICER'S RETURN

Received this Citation on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M; and executed at \_\_\_\_\_ within the county of \_\_\_\_\_, State of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by delivering to the within named (Def.): \_\_\_\_\_ defendant(s), a true copy of this Citation together with the accompanying copy of PLAINTIFFS' ORIGINAL PETITION, having first endorsed on same the date of delivery.

Authorized Person/Constable/Sheriff: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_ By \_\_\_\_\_ Deputy

Fees \$ \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_ (Must be verified if served outside the State of Texas)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ to certify which witness my hand and seal of office

(Seal)

County of \_\_\_\_\_, State of \_\_\_\_\_

**CITATION**

Cause No. 153-279972-15

DAVID MCALPINE

VS.

THE NORTHWESTERN MUTUAL LIFE  
INSURANCE CO, ET AL

ISSUED

This 28th day of July, 2015

Thomas A. Wilder  
Tarrant County District Clerk  
100 N CALHOUN  
FORT WORTH TX 76196-0402By **KIMBERLY KRUMLAND** DeputyPHILLIP BALDWIN, JR  
Attorney for: DAVID MCALPINE  
Phone No. (903)926-1095  
ADDRESS: 4412 ROSEWOOD

MARSHALL, TX 75672

**CIVIL LAW**

\*15327997215000007\*

SERVICE FEES NOT COLLECTED  
BY TARRANT COUNTY DISTRICT CLERK  
ORIGINAL

PS Form 3811, April 2015 PSN 7530-02-000-9038

7014 3490 0000 3320 0097

Restricted Delivery

Domestic Return Receipt

2. Article Number (Transfer from service label)

9590 9403 0254 5155 6350 28

1. Article Addressed to:  
153-279972-15 CM  
NORTHWESTERN MUTUAL LIFE INSURANCE  
CORPORATION  
B/S CORPORATION SERVICE CO REG AG  
211 E 7<sup>TH</sup> ST STE 620  
AUSTIN, TX 78701THOMAS A. WILDER  
DISTRICT CLERK

3. Service Type
- ☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☐ Certified Mail  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express  
☐ Registered Mail  
☐ Registered Mail Restricted Delivery  
☐ Signature Confirmation  
☐ Signature Confirmation Restricted Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ NoA. Signature ☒ X ☐ Agent  
B. Received by (Printed Name) **CJBE 30 JUL 2015**

COMPLETE THIS SECTION ON DELIVERY

U.S. Postal Service<sup>TM</sup>  
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NORTHWESTERN MUTUAL LIFE INSURANCE

Street & A  
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CORPORATION

City, State

B/S CORPORATION SERVICE CO REG AG

211 E 7<sup>TH</sup> ST STE 620

PS Form 3

AUSTIN, TX 78701

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TARRANT COUNTY  
THOMAS A. WILDER  
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2015 AUG -4 PM 4: 20

## **EXHIBIT “4”**

153-279972-15

FILED  
TARRANT COUNTY  
11/20/2015 2:30:42 PM  
THOMAS A. WILDER  
DISTRICT CLERK

**CAUSE NO. 153-279972-15**

**DAVID MCALPINE**  
*Plaintiff*

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§

**IN THE DISTRICT  
COURT**

**v.**

\_\_\_\_ **DISTRICT**

**THE NORTHWESTERN  
MUTUAL LIFE  
INSURANCE CO.; AND  
DAVID THORPE**  
*Defendants*

**TARRANT COUNTY,  
TEXAS**

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES **DAVID MCALPINE**, hereinafter referred to as Plaintiff, complaining of **THE NORTHWESTERN MUTUAL LIFE INSURANCE CO. and DAVID THORPE** , hereinafter referred to as Defendants, and for cause of action, Plaintiff would respectfully show the Court and Jury as follows:

Plaintiff intends for discovery to be conducted under Level III pursuant to Rule 190.1 of the Texas Rules of Civil Procedure.

**II.**

**SERVICE**

1. Defendant, **NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION** is a Corporation which may be served through its Attorney for service, as registered at the Texas Department of Insurance:

C Tait Cruse  
5420 Lyndon B Johnson Fwy Suite 1300  
Two Lincoln Centre  
Dallas TX 75240-6299

153-279972-15

2. Defendant David Thorpe, is a **NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION** employee who is a Texas resident, whose address is currently unknown at this time.

### **III.**

#### **FACTS**

3. On September 20, 1990, Plaintiff David McAlpine contracted with The Northwestern Mutual Life Insurance Company to provide disability income insurance in the event that he suffered disability and was impaired in his ability to work. Plaintiff will show that all premiums were paid and the policy was and remains in full force and effect.

4. The policy provides that the “Full Benefit” is payable for “Total Disability” and that the “Proportionate Benefit” is payable for partial disability.

5. David McAlpine is a Fort Worth OB/GYN who has run a busy practice in Fort Worth for over 25 years. At least as early as August 13, 2013, Plaintiff McAlpine began to experience pain in both hands and suffered extensive osteoarthritis, which eventually led to him being forced to stop taking new obstetrics patients altogether on December 20, 2013. Defendant David Thorpe is a Northwestern Mutual Life Insurance Company employee and investigator who has participated in the denial of Dr. McAlpine’s contracted for policy benefits.

6. At or near the time these original policies were purchased, Dr. McAlpine was concerned about certain policy definitions and requested clarification. A letter written by an associate actuary on behalf of Defendant in 1990 clarified that both obstetrics and gynecology are two separate “occupations” and that the term “Total Disability” is defined as the inability to perform one’s “occupation” and that “all occupations will be combined together to be ‘his occupation’”. Despite the plain language of the 1990 letter and the fact that Dr. McAlpine is unable to perform

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obstetrics, Defendant has denied paying him his contracted for "Total Disability" payments.

**IV.**

**CAUSE OF ACTION AGAINST DEFENDANTS:**  
**BREACH OF CONTRACT**

7. Plaintiff, **DAVID MCALPINE** would show that prior to the 15<sup>th</sup> day of June 2010, the Defendant insurance company, **THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY**, issued Disability Income policies to **DAVID MCALPINE**, policy number D712825 and D776743, which provided coverage in the event that Plaintiff became totally disabled, the Plaintiff would be paid full benefits at the time of the incident, based on his inability to perform the duties of his occupation". Said policy was in full force and effect and all premiums paid at all times relevant hereto. Plaintiff requests recovery at common law and VATS Ins. Code §542. Plaintiff has not been paid under the terms of his contract with Defendant.

8. Defendant, **THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY** is hereby given notice to produce such policy of insurance on the trial of this case. If necessary, secondary evidence will be introduced by the Plaintiff to prove the existence and terms of the policies.

**CAUSE OF ACTION AGAINST DEFENDANTS:**  
**BAD FAITH**

**a. Ch. 541 Texas Insurance Code Violations**

Sec. 541.060. UNFAIR SETTLEMENT PRACTICES.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

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- (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:
  - (A) a claim with respect to which the insurer's liability has become reasonably clear;
- (3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
- (4) Failing within a reasonable time to:
  - (A) affirm or deny coverage of a claim to a policyholder; or
- (7) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;
- (9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:
  - (A) a court orders the claimant to produce those tax returns;
  - (B) the claim involves a fire loss; or
  - (C) the claim involves lost profits or income.

**Sec. 541.061. MISREPRESENTATION OF INSURANCE POLICY.**

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:

- (1) making an untrue statement of material fact;
- (2) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;
- (3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;
- (4) a material misstatement of law; or

**b. Texas Deceptive Trade Practices Act Violations**

**Sec. 17.50. RELIEF FOR CONSUMERS.** (a) A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

- (4) the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code

**VI.**  
**DAMAGES**

- 9. As a proximate result of the conduct as above described, Plaintiff, **DAVID MCALPINE** sustained personal injuries, all of which have caused him in the past, and will cause him in the

153-279972-15

future, contracted for "Total Disability" benefits, mental anguish, and lost wages, for which he should be compensated in accordance with the laws of the State of Texas. Specifically, because these actions were committed knowingly and intentionally, Plaintiff is entitled to three times the economic damages, mental anguish damages, and necessary court cost's and attorney's fees under 17.50(b) of the Texas Business and Commerce Code. Plaintiff will further show that she is entitled to Attorney's Fees Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 38.001(8) (Vernon 2008).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and that upon final hearing hereof, Plaintiff have judgment against Defendant for all damages to which they are entitled under the laws of the State of Texas, which amount exceeds the minimum jurisdictional limit of this Court; for pre-judgment interest in accordance with the law; for interest on the judgment; cost of suit; and for such other and further relief, either at law or in equity, to which Plaintiffs may be entitled.

Respectfully submitted,

By: 

Phillip Baldwin Jr.  
Texas Bar No. 01629200  
4412 Rosewood  
Marshall, Texas 75672  
Mailing Address  
P. O. Box 1948  
Marshall, Texas 75671-1948  
Tel. (903) 926-1095  
Fax. (210) 568-6959  
Email: pbbjr@msn.com  
Attorney for Plaintiffs

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**



153-279972-15

## THOMAS A. WILDER, DISTRICT CLERK

### TARRANT COUNTY E-FILING SERVICE REQUEST FORM

\* This document MUST be filed as a LEAD DOCUMENT REQUEST for E-Filing.

Cause No: \_\_\_\_\_

Style of Case: \_\_\_\_\_

Please reference the District Clerk web page, [www.tarrantcounty.com/eDistrictClerk](http://www.tarrantcounty.com/eDistrictClerk) for the following forms:  
Abstracts, Executions, Subpoenas.

**Choose the type of service documents for issuance and select the type and quantity of issuance(s) needed.**

☐ **Check box if you would like the District Clerk's Office to make copies for your service.** (add \$.35 per page per pleading for copies for service)

Quantity	Type of Service	TC Constable	Alternative Service (Private Process or Out of County)	Certified Mail
	Citation by Publication			
	Citation by Posting			
	Citation			
	TRO			
	Show Cause			
	Capias			
	Arrest Warrant			
	Protective Order			
	Writ of Habeas			
	Writ of Attachment			
	Bench Warrant			
	Writ of Garnishment			
	Writ of Permanent Injunction			
	Writ of Temporary Injunction			

Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____
Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____
Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____

Attach additional pages if there are more parties to be served.

#### ATTORNEY(OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: \_\_\_\_\_ TEXAS BAR NO./ID NO. \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

PHONE NO: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

REVISED 12/20/13

## **EXHIBIT “5”**

153-279972-15

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11/20/2015 4:08:17 PM  
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## THOMAS A. WILDER, DISTRICT CLERK

### TARRANT COUNTY E-FILING SERVICE REQUEST FORM

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**Choose the type of service documents for issuance and select the type and quantity of issuance(s) needed.**

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Quantity	Type of Service	TC Constable	Alternative Service (Private Process or Out of County)	Certified Mail
	Citation by Publication			
	Citation by Posting			
	Citation			
	TRO			
	Show Cause			
	Capias			
	Arrest Warrant			
	Protective Order			
	Writ of Habeas			
	Writ of Attachment			
	Bench Warrant			
	Writ of Garnishment			
	Writ of Permanent Injunction			
	Writ of Temporary Injunction			

Name of Party to be served: _____	Service Type: _____
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Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____
Name of Party to be served: _____	Service Type: _____
Address for Service: _____	Party Type: _____

Attach additional pages if there are more parties to be served.

**ATTORNEY(OR ATTORNEY'S AGENT) REQUESTING SERVICE:**

NAME: \_\_\_\_\_ TEXAS BAR NO./ID NO. \_\_\_\_\_  
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 PHONE NO: \_\_\_\_\_ FAX NO.: \_\_\_\_\_  
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REVISED 12/20/13

## **EXHIBIT “6”**

Cause Number 153-279972-15  
DAVID MCALPINE VS THE NORTHWESTERN MUTUAL LIFE  
INSURANCE CO, ET AL

OFFICER'S RETURN

Received this Citation By Certified Mail on the 23rd day of November, 2015 at 11:28 AM; and executed at  
B/S C TAIT CRUSE/ATTORNEY FOR SERVICE 5420 LYNDON B JOHNSON FW STE 1300 DALLAS TX 75240 6299

within the county of \_\_\_\_\_ State of TX on the 1st day of December, 2015 by mailing to  
the within named NORTHWESTERN MUTUAL LIFE INSURANCE CORPO a true copy of this Citation By Certified Mail  
together with the accompanying copy of:  
PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

Authorized Person/Constable/Sheriff: Thomas A. Wilder  
100 N CALHOUN  
FORT WORTH TX 76196-0402

County of Tarrant, State of Texas

By Lisa Letbetter Deputy

Fees \$ 75.00 LISA LETBETTER

(Must be verified if served outside the State of Texas)

State of \_\_\_\_\_ County of \_\_\_\_\_

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_  
to certify which witness my hand and seal of office

(Seal)

\_\_\_\_\_  
County of Tarrant, State of Texas

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TARRANT COUNTY  
2015 DEC -4 PM 3:15  
THOMAS A. WILDER  
DISTRICT CLERK



\*15327997215000014\*

FILED  
TARRANT COUNTY  
2015 DEC -4 PM 3: 15  
THOMAS A. WILDER  
DISTRICT CLERK

THE STATE OF TEXAS  
DISTRICT COURT, TARRANT COUNTY

CITATION

Cause No. 153-279972-15

DAVID MCALPINE

VS.

THE NORTHWESTERN MUTUAL LIFE INSURANCE CO, ET AL

TO: NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION

B/S C TAIT CRUSE/ATTORNEY FOR SERVICE 5420 LYNDON B JOHNSON FW STE 1300 DALL  
TX 75240-6299

You said DEFENDANTS are hereby commanded to appear by filing a written answer to the PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 153rd District Court in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

DAVID MCALPINE

Filed in said Court on November 20th, 2015 Against  
NORTHWESTERN MUTUAL LIFE INSURANCE CORPORATION, DAVID THORPE

For suit, said suit being numbered 153-279972-15 the nature of which demand is as shown on said PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION a copy of which accompanies this citation.

FILED  
TARRANT COUNTY  
2015 DEC -4 PM 3:15  
THOMAS A. WILDER  
DISTRICT CLERK

PHILLIP BALDWIN, JR

Attorney for DAVID MCALPINE Phone No. (903)926-1095

Address 4412 ROSEWOOD CIRCLE MARSHALL, TX 75672

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 13rd day of November, 2015.

By Lisa Letbetter Deputy

LISA LETBETTER

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 100 N CALHOUN, FORT WORTH TX 76196-0402

OFFICER'S RETURN

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a true copy of this Citation together with the accompanying copy of PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION having first endorsed on same the date of delivery.

Deputy/Constable/Sheriff: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_ By \_\_\_\_\_ Deputy  
Fees \$ \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_ (Must be verified if served outside the State of Texas)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
to certify which witness my hand and seal of office

(Seal)

County of \_\_\_\_\_, State of \_\_\_\_\_

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B/S C TAIT CRUSE/ATTY FOR SERVICE  
5420 LYNDON B JOHNSON FWY STE 1300  
DALLAS TX 75240-6299

153-279972-15 DP/LL/CM



9590 9401 0019 5168 0363 32

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PS Form 3811, April 2015 PSN 7530-02-000-9053

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X *Thomas A. Wilder* ☐ Agent ☐ Addressee

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*ICATL A. Wilder* ☐ Date of Delivery

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TARRANT COUNTY  
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Domestic Return Receipt

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TARRANT COUNTY  
THOMAS A. WILDER  
DISTRICT CLERK  
2015 DEC -4 PM 3:15

**CITATION**

Cause No. 153-279972-15

DAVID MCALPINE

VS.

THE NORTHWESTERN MUTUAL LIFE  
INSURANCE CO, ET AL

ISSUED

This 23rd day of November, 2015

Thomas A. Wilder  
Tarrant County District Clerk  
100 N CALHOUN  
FORT WORTH TX 76196-0402

By LISA LETBETTER Deputy

PHILLIP BALDWIN, JR  
Attorney for: DAVID MCALPINE  
Phone No. (903)926-1095  
ADDRESS: 4412 ROSEWOOD CIRCLE

MARSHALL, TX 75672

**CIVIL LAW**

\*41000005126662351\*